

7.1 Introduction

The powers conferred on the Central Government under clause (xviaa) and clause (xvia) of section 37(2) of the Central Excise Act, 1944 provide for credit of Central Value Added Tax (CENVAT). Section 37(2) (xvia) empowers the Central Government to make rules to provide for the credit of duty paid or deemed to have been paid on the goods used in or in relation to manufacture of excisable goods. Section 37(2) (xviaa) empowers Central Government to make rules to provide for credit of service tax leviable under Chapter V of the Finance Act, 1994, paid or payable on taxable services used in, or in relation to, the manufacture of excisable goods.

CENVAT was initially introduced as MODVAT in the year 1986 whereby the manufacturers could avail credit of duty paid on inputs used in or in relation to manufacture of the final products for being set off against the duty payable on the final products. Later on the scheme was extended to capital goods also. In the year 2001, CENVAT Credit Rules, 2001 were introduced which were superseded by the CENVAT Credit Rules, 2002. Credit of service tax paid on input services was introduced for the first time in the year 2002.

CENVAT Credit Rules, 2004: On 10.09.2004, CENVAT Credit Rules, 2004 were notified to replace the erstwhile CENVAT Credit Rules, 2002 and Service Tax Credit Rules, 2002. These rules have integrated the credit of goods and services. In other words, duties of excise paid on inputs/capital goods and service tax paid on input services can be adjusted against a manufacturer's excise duty liability or a service provider's service tax liability.

The CENVAT Credit Rules, 2004 extend to the whole of India. However, the provisions of these rules in relation to availment and utilization of credit of service tax do not apply to the State of Jammu and Kashmir as service tax law is not applicable to Jammu & Kashmir. The rules cover all the three categories, namely manufacturers, service providers and manufacturers-cum-service providers.

7.2 Rule 2 - Definitions

The CENVAT rules have to be interpreted progressively to ensure that the purpose of the scheme is preserved. Therefore, the Rules are to be read liberally and not literally.

(1) **Capital Goods [Rule 2(a)] :** Capital goods means

(A) the following goods, namely :-

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- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;
 - (ii) pollution control equipment;
 - (iii) components, spares and accessories of the goods specified at (i) and (ii);
 - (iv) moulds and dies, jigs and fixtures;
 - (v) refractories and refractory materials;
 - (vi) tubes and pipes and fittings thereof;
 - (vii) storage tank, and
 - (viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711** and their chassis, but including dumpers and tippers.
- used -
- (1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or
 - (1A) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or
 - (2) for providing output service.
- (B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for-
- (i) providing an output service of renting of such motor vehicle; or
 - (ii) transportation of inputs and capital goods used for providing an output service; or
 - (iii) providing an output service of courier agency.
- (C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of-
- (i) transportation of passengers; or
 - (ii) renting of such motor vehicle; or
 - (iii) imparting motor driving skills.
- (D) components, spares and accessories of motor vehicles which are capital goods for the assessee.

**Tariff headings 8702, 8703, 8704, 8711 are as follows:-

- (i) Motor vehicles for the transport of 10 or more persons, including the driver.

- (ii) Motor cars and other motor vehicles principally designed for the transport of persons (other than those covered in (i) above), including station wagons and racing cars.
- (iii) Motor vehicles for transport of goods.
- (iv) Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars.

(2) Exempted Goods [Rule 2(d)]: Exempted goods means excisable goods which are exempt from the whole of the duty of excise leviable thereon and includes goods which are chargeable to "Nil" rate of duty and goods in respect of which the benefit of an exemption under *Notification No. 1/2011-CE, dated 01.03.2011* or under entries at serial numbers 67 and 128 of *Notification No. 12/2012 CE dated 17.03.2012* is availed.

Note: Excise duty @ 2% is paid under Notification No. 1/2011-CE dated 01.03.2011 and @ 1% on coal and fertilizers under Notification No. 12/2012 C.E. dated 17.03.2012.

(3) Exempted Service [Rule 2(e)]: Exempted service means a-

- (i) taxable service which is exempt from the whole of the service tax leviable thereon; or
- (ii) service, on which no service tax is leviable under section 66B of the Finance Act; or
- (iii) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994¹ [Rule 2(e)].

(4) Final Products [Rule 2(h)]: Final products means excisable goods manufactured or produced from input, or using input service.

Excisable goods are defined in section 2(d) of the Act to mean "goods which are specified in the Tariff as being subject to a duty of excise. Therefore, this term is wide enough to cover all products, whether final or intermediate, which are manufactured by the assessee by a manufacturing process. This may also include the goods which are exempted by way of notification.

(5) First Stage Dealer [Rule 2(ij)]: First Stage Dealer means a dealer who purchases the goods directly from-

- (i) the manufacturer under the cover of an invoice issued in terms of the provision of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or
- (ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice.

¹ Rule 6A sets out the provisions in respect of export of services. The same will be discussed at the Final Level.

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(6) Inputs [Rule 2(k)]: Input means-

- (i) all goods used in the factory by the manufacturer of the final product; or
- (ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or
- (iii) all goods used for generation of electricity or steam for captive use; or
- (iv) all goods used for providing any output service;

but excludes-

- (A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;
- (B) any goods used for -
 - (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
 - (b) laying of foundation or making of structures for support of capital goods, except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;
- (C) capital goods except when used as parts or components in the manufacture of a final product;
- (D) motor vehicles;
- (E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and
- (F) any goods which have no relationship whatsoever with the manufacture of a final product.

ANALYSIS: *Circular No. 943/4/2011 CX dated 29.04.2011* clarifies that the expression "no relationship whatsoever with the manufacture of a final product" must be interpreted and applied strictly and not loosely. Only credit of goods used in the factory but having absolutely no relationship with the manufacture of final product is not allowed. Goods such as furniture and stationary used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed.

Free warranty means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer.

(7) Input Service [Rule 2(l)]: -

I. Meaning: Input service means any service, -

- (i) used by a provider of output service for providing an output service; or
- (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and

II. Inclusions: Input service includes:-

Services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

III. Exclusions: Input service excludes:-

- (A) Following services, if they are used for construction or execution of works contract of a building or a civil structure or a part thereof; or laying of foundation or making of structures for support of capital goods:-

- (i) Service portion in the execution of a works contract
- (ii) Construction service as listed under section 66E(b) of the Act.

However, if works contract services are used for provision of construction services, or vice versa, they shall be eligible as input services.

- (B) Services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods

ANALYSIS: It implies that the credit of the service tax paid on hiring of the motor vehicles, which are eligible as capital goods, is available.

- (BA) Service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

- (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or
- (b) an insurance company in respect of a motor vehicle insured or reinsured by such person

ANALYSIS: The credit of the service tax paid on insurance, servicing, repair, maintenance etc. of the motor vehicles which are eligible as capital goods, is available.

Exceptions: Credit of the service tax paid on insurance, servicing, repair, maintenance etc. of the motor vehicle, even if not a capital good, is available to the following:-

- (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person;

or

- (b) an insurance company in respect of a motor vehicle insured or reinsured by such person.

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In other words,

- (a) A manufacturer of motor vehicle can avail credit of the service tax paid on the insurance and on the repair and maintenance of the motor vehicles manufactured by him.
- (b) A motor insurance company can avail credit of the service tax paid on the re-insurance and third party insurance and repair and maintenance of the motor vehicles insured /re-insured by them.
- (C) Services such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee.

ANALYSIS: The aforesaid services are **not** eligible as input services **only when** they are used primarily for personal use or consumption of any employee. Further, the list is only illustrative and not exhaustive.

(8) Input Service Distributor [Rule 2(m)]: Input service distributor means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be.

(9) Job Work [Rule 2(n)]: Job work has been defined in Rule 2(n) as processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly.

(10) Large Tax Payer [Rule 2(na)]: Rule 2(na) defines large tax payer to have the meaning assigned to it in the Central Excise Rules, 2002. The concept relating to large tax payer has been dealt in Chapter 5: General Procedures Under Central Excise of Section A of this Study Material. .

(11) Manufacturer or producer [Rule 2(naa)]: Manufacturer or producer

- (i) in relation to articles of jewellery or other articles of precious metals falling under heading 7113 or 7114 as the case may be of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) of rule 12AA of the Central Excise Rules, 2002;
- (ii) in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1A) of rule 4 of the Central Excise Rules, 2002.

(12) Output Service [Rule 2(p)]: Output service means any service provided by a provider of service located in the taxable territory but shall not include a service,-

- (1) specified in the negative list under section 66D of the Finance Act; or
 - (2) where the whole of service tax is liable to be paid by the recipient of service.
- (13) Person liable for paying service tax [Rule 2(q)]:** Person liable for paying service tax has the meaning as assigned to it in rule 2(1)(d) of the Service Tax Rules, 1994.

(14) Place of removal [Rule 2(qa)]: Place of removal means-

- (i) *a factory or any other place or premises of production or manufacture of the excisable goods;*
- (ii) *a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;*
- (iii) *a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed.*

(15) Provider of taxable service [Rule 2(r)]: Provider of taxable service includes a person liable for paying service tax.

(16) Second Stage Dealer [Rule 2(s)]: Second stage dealer means a dealer who purchases the goods from a first stage dealer.

7.3 Rule 3 – CENVAT credit

(1) Duties/tax eligible for CENVAT credit: A manufacturer and an output service provider can take credit of excise duty paid on inputs or capital goods and service tax paid on input services. Such credit of excise duty and service tax together is known as 'CENVAT credit'. This credit can be utilized to pay excise duty on final products /service tax on output services in accordance with the conditions and restrictions prescribed in CENVAT Credit Rules, 2004.

As per sub-rule (1) of rule 3, a manufacturer or an output service provider can take CENVAT credit of-

- (i) Basic excise duty;
However, CENVAT credit of basic excise duty is not allowed if excise duty @ 2% is paid under Notification No.1/2011-CE dated 01.03.2011 or excise duty @ 1% is paid on coal and fertilizers under Notification No. 12/2012 CE dated 17.03.2012.
- (ii) National calamity contingent duty;
- (iii) Education cess and secondary and higher education cess on excisable goods;
- (iv) Additional duty leviable under section 3 of the Customs Tariff Act (CVD), equivalent to the duty of excise specified under (i), (ii) and (iii);
However, CENVAT credit of CVD (leviable under section 3(1) of the Customs Tariff Act) paid on ships, boats and other floating structures up [Entry 8908 00 00 of the Customs Tariff] for breaking is allowed only to the extent of 85%.
- (v) Additional duty leviable under section 3(5) of the Customs Tariff Act (Special CVD);

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However, a provider of output service is not eligible to take credit of such additional duty.

- (vi) Service tax;
- (vii) Education cess and Secondary and higher education cess on taxable services; and
- (viii) Additional duty of excise leviable on pan masala and tobacco products under the Finance Act, 2005

paid on-

- (i) any input or capital goods **received** in the factory of manufacture of final product or by the provider of output service; and
- (ii) any input service received by the manufacturer of final product or by the provider of output services.

Points to be noted:

- (i) **Job-worker manufacturing exempt intermediate goods eligible to avail CENVAT credit:** CENVAT credit is allowed in respect of the above-mentioned duties, tax or cess paid on any inputs or input service used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the *Notification No. 214/86* and received by the manufacturer for use in, or in relation to, the manufacture of final products.

[Notification No. 214/86 grants exemption to specified goods manufactured in a factory as a job work and used in the manufacture of final products, which are liable to excise duty.]

- (ii) **Amount of excise duty paid on capital goods at the de-bonding of a unit allowed as CENVAT credit:** The amount equal to excise duty paid on the capital goods at the time of de-bonding of a unit in terms of the para 8 of *Notification No. 22/2003 CE dated 31.03.2003* (which exempts certain goods when brought into 100% EOU / STP complex) is allowed as CENVAT credit. *[Notification No. 22/2003 CE dated 31.03.2003 exempts certain goods when brought into 100% EOU/STP complex.]*

It may be noted here that in this case the credit is allowed for an amount equal to excise duty and not for excise duty.

- (iii) **CVD paid on Project Imports allowable as CENVAT credit:** The manufacturer of the final products and the provider of output service are allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 9801 (project imports) of the First Schedule to the Customs Tariff Act.
- (iv) **'Duty paid' as per the invoice available as credit in case of subsequent reduction in price:** Where a manufacturer avails credit of the amount of duty paid by supplier as reflected in the excise invoice, but subsequently the supplier allows some trade discount or reduces the price, without reducing the duty paid by him, the entire amount of duty paid by the manufacturer, as shown in the invoice would be available as credit. This is because rule 3 allows credit of duty "paid" by the inputs manufacturer and not duty "payable" by the said manufacturer. However, the supplier, who has paid duty, should

not file/claim the refund on account of reduction in price.

It may, however, be noted that if the duty paid is also reduced, along with the reduction in price, the reduced excise duty would only be available as credit [*Circular No. 877/15/2008-CX dated 17.11.2008*].

(2) Availment of credit when exempt/non-excisable goods or exempt services become dutiable/excisable goods or taxable services:

Goods: An assessee manufacturing exempted goods or non-excisable goods cannot avail CENVAT credit of duty paid on inputs used in the manufacture of such final products. However, if such final product becomes dutiable or excisable at a later date CENVAT credit of inputs in stock as on that date can be availed by virtue of rule 3(2).

In effect sub-rule (2) provides that an assessee entering into the tax net will be able to avail CENVAT credit of excise duty paid on

- inputs lying in stock
- inputs contained in work-in-progress
- inputs contained in finished goods lying in stock

on the date on which any goods manufactured by the said manufacturer or producer cease to be exempted goods or any goods become excisable.

This provision is mainly invoked when the aggregate value of clearances of SSI units crosses ₹150 lakh and they become liable to excise duty.

Services: Sub-rule (3) lays down that in relation to a service which ceases to be an exempted service, the provider of the output service shall be allowed to take CENVAT credit of the duty paid on the inputs received and lying in stock on the date on which any service ceases to be an exempted service and used for providing such service.

(3) Utilization of CENVAT credit:

(i) Eligible payments: As per Rule 3(4), CENVAT credit can be utilized for payment of:

- (a) **any** excise duty on *any* final products; or
- (b) an **amount** equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or
- (c) an **amount** equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or
- (d) an **amount**, when goods are cleared after repairs under sub-rule (2) of rule 16 of Central Excise Rules, 2002²; or
- (e) service tax on any output service.

² Rule 16 of Central Excise Rules, 2002 contains the provisions in respect of credit of duty on goods (on which duty had been paid at the time of removal) brought to any factory for being re-made, refined reconditioned etc. This will be dealt at the Final Level.

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Since, the credit can be utilized for payment of *any* excise duty on *any* final product or service tax on output service, 'one to one' co-relation between inputs/input services and final product/output services is not required.

- (ii) **Non-eligible payments:** CENVAT credit cannot be utilized/used for payment of:
- (a) any duty of excise on goods in respect of which the benefit of an exemption under *Notification No. 1/2011 CE dated 01.03.2011* is availed.
 - (b) service tax in respect of services where the person liable to pay tax is the service recipient.
 - (c) clean energy cess
- (iii) **CENVAT credit available on the last day of the month/quarter only to be utilized:** While paying excise duty or service tax, the CENVAT credit can be utilised only to the extent such credit is available on the last day of the month or quarter for payment of duty or tax relating to that month or the quarter [First proviso to rule 3(4)].

Points to be noted:

- (a) Units situated in North Eastern States, Jammu and Kashmir, Sikkim and Kutch district enjoying exemption of duty payable in cash (i.e, duty other than the duty paid by utilizing CENVAT) can avail CENVAT on inputs and input services only for payment of duty on final products in respect of which exemption has been availed.
 - (b) Credit of the special CVD (additional duty leviable under section 3(5) of the Customs Tariff Act) cannot be utilised for payment of service tax on any output service.
 - (c) Credit of only National Calamity Contingent duty (NCCD) can be utilised for payment of the NCCD payable on mobile phones. In other words, in the absence of the credit of NCCD, NCCD payable on mobile phones will have to be paid in cash (even if credit of other duties/tax is available) as no other credit can be utilized to pay such duty.
 - (d) Credit of only additional duty of excise leviable on pan masala and tobacco products under the Finance Act, 2005 can be utilized for payment of said additional duty of excise on final products. In other words, in the absence of the credit of such additional duty, the additional duty leviable on pan masala and tobacco products will have to be paid in cash (even if credit of other duties/tax is available) as no other credit can be utilized to pay such duty.
- (4) **Reversal of CENVAT credit on inputs/capital goods/input services:** The CENVAT credit taken on inputs and/or capital goods by the manufacturer of goods or the provider of output service need to be paid (reversed) in certain cases under rule 3. ***Unless specified otherwise, such amount has to be paid by debiting the CENVAT credit or otherwise on or before the 5th day of the following month and on or before the 31st day of March in case of month of March.*** However, if the manufacturer of goods or the provider of output service fails to pay such amount, the same would be recovered in the manner provided under

rule 14³. The cases where CENVAT credits need to be reversed are:

(i) **Inputs/capital goods removed as such:** Rule 3(5) states that if the inputs or capital goods on which CENVAT credit has been taken are removed as such from the factory or premises of the provider of output service, the manufacturer of the final products or provider of output service has to pay an amount equal to the credit availed in respect of such inputs or capital goods. Such removal shall be made under the cover of an invoice referred to in Rule 9. The buyer will be able to take credit of such amount by virtue of rule 3(6).

Exceptions: The payment referred to in rule 3(5) above is not required to be made if:

- (i) inputs or capital goods are removed outside the premises of the provider of output service for providing the output service;
- (ii) inputs are removed outside the factory for providing free warranty for final products. .

(ii) **Capital goods removed after being used:** As per clause (a) of sub-rule (5A), if the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT credit, namely:-

S.No.	Type of capital goods	Percentage points calculated by straight line method	
1.	Computers and computer peripherals	For each quarter in	Percentage
		Year* 1	10 %
		Year 2	8 %
		Year 3	5 %
		Year 4 & 5	1 %
2.	Other capital goods	2.5% for each quarter	

* Here, year is taken to be the financial year.

However, if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

In other words, if the capital goods are removed after being used, the manufacturer/provider of output services shall pay an amount equal to:-

- (i) CENVAT credit taken on the said capital goods reduced by the percentage points calculated by straight line method (mentioned above) for each quarter of a year or part thereof from the date of taking the CENVAT credit;

or

³ Rule 14 provides for recovery of CENVAT credit wrongly taken. It will be discussed at the Final Level.

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(II) Duty leviable on transaction value;

whichever is higher. The buyer will be able to take credit of such amount by virtue of rule 3(6).

(iii) Capital goods removed as waste or scrap: As per clause (b) of sub-rule (5A), if the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value. The buyer will be able to take credit of such amount by virtue of rule 3(6).

(iv) **Inputs/capital goods written off before use:** Sub-rule (5B) provides that if the value of any

(a) input, or

(b) capital goods before being put to use,

on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account, then the manufacturer or service provider is required to pay an amount equivalent to the CENVAT credit taken in respect of the said inputs or capital goods. However, if such inputs or capital goods are subsequently used in the manufacture of final products or the provision of output services, the manufacturer or output service provider can take credit of the amount paid earlier.

Credit in case of inputs contained in written off WIP/finished goods: Circular No. 907/27/2009-CX dated 07.12.2009 sets out the manner of reversal of CENVAT credit taken on the inputs, which have gone into manufacture of work in progress (WIP), semi finished goods and finished goods which have also been written off fully in the books of accounts as under-

(A) **Finished goods written off:**

S.No.	Case	Treatment
1.	Excise duty on the finished goods not remitted	Manufacturer is liable to pay excise duty. Thus, he need not reverse the CENVAT credit taken on inputs.
2.	Excise duty on the finished goods remitted under rule 21 of the Central Excise Rules, 2002 ⁴	Manufacturer is required to reverse the credit on the inputs used.

(B) **Work in progress (WIP) written off:**

S.No.	Stage of completion of the WIP goods	Treatment
1.	WIP can be considered as	Same treatment as applicable to finished

⁴ Remission means waiver or cancellation of excise duty payable on goods that are destroyed or completely damaged before removal from factory. 'Remission of duty' will be discussed at the Final Level.

	manufactured goods	goods in point (i) mentioned above
2.	WIP cannot be considered as manufactured goods	Goods to be considered as inputs and the treatment for reversal of credit applicable to inputs to apply in this case as well

(v) **Remission of duty on final product:** Sub-rule (5C) provides that where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods *and the CENVAT credit taken on input services used in or in relation to the manufacture or production of said goods* shall be reversed.

(5) **CENVAT credit in case of inputs/capital goods procured from 100% EOU/EHTP/STP:** As per sub-rule (7) the amount of CENVAT credit in respect of inputs and capital goods cleared **on or after the 07.09.2009** from an export-oriented undertaking (EOU) or by a unit in Electronic Hardware Technology Park (EHTP) or in a software technology park (STP), as the case may be, on which such undertaking or unit has paid –

- A. excise duty leviable under section 3 of the Excise Act read with serial number 2 of the *Notification No. 23/2003 CE, dated 31.03.2003 [Notification No. 23/2003 CE dated 31.03.2003 grants exemption to specified goods produced in EOU/EHTO/STP]*; and
- B. the education cess and the secondary and higher education cess on the excise duty referred to in (A),

shall be the aggregate of –

- (a) that portion of excise duty referred to in (A), as is equivalent to -

- the additional duty leviable under section 3(1) of the Customs Tariff Act (Countervailing duty), which is equal to the duty of excise under section 3(1)(a) of the Excise Act;
- the additional duty leviable under section 3(5) of the Customs Tariff Act (special countervailing duty @ 4%); and

- (b) the education cess and the secondary and higher education cess referred to in (B).

Rule 3(7) has to be applied only for the duties levied under section 3 of the Central Excise Act. The availment of credit in respect of any other duties charged by the EOU/EHTP/STP unit would be governed by Rule 3(1).

(6) **Inter-changeability of CENVAT credit:** (1) Clause (b) of sub-rule 7 provides that CENVAT credit in respect of -

- (i) NCCD;
- (ii) Education cess on excisable goods;
- (iii) Secondary and higher education cess on excisable goods;

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- (iv) Additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified above;
- (v) Education cess on taxable services;
- (vi) Secondary and higher education cess on taxable services; and
- (vii) Additional duty of excise leviable on pan masala and tobacco products,

shall be utilized towards payment of -

- NCCD, or the education cess on excisable goods, or the secondary and higher education cess on excisable goods, or the education cess on taxable services or the secondary and higher education cess on taxable services or the additional duty of excise leviable on pan masala and tobacco products, **respectively**, on any final products manufactured by the manufacturer, or
- for payment of such duty on inputs themselves, if such inputs are removed as such or after being partially processed or on any output service.

Credit of education cess on excisable goods and taxable services: Credit of the education cess on excisable goods and education cess on taxable services can be utilised, either for payment of the education cess on excisable goods or for the payment of the education cess on taxable services.

Credit of secondary and higher education cess on excisable goods and taxable services: Credit of the secondary and higher education cess on excisable goods and the secondary and higher education cess on taxable services can be utilized, either for payment of the secondary and higher education cess on excisable goods or for the payment of the secondary and higher education cess on taxable services.

(7) Credit of CVD paid on marble slabs: CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act (CVD) paid on marble slabs or tiles is allowed to the extent of ₹ 30 per square metre.

(8) CENVAT credit *vis a vis* notification granting exemption on condition of non-availability of credit: It has been explained that where the provisions of any other rule or notification provide for grant of whole or part exemption on condition of non-availability of credit of duty paid on any input or capital goods, or of service tax paid on input service, the provisions of such other rule or notification shall prevail over the provisions of these rules.

7.4 Rule 4 – Conditions for allowing CENVAT credit

A. INPUTS

(1) Credit available on receipt of inputs in the factory of the manufacturer/premises of the provider of output service: Sub-rule 1 allows instant credit on inputs after receipt into the factory of the manufacturer or in the premises of the provider of output service. Two points to be noted here are that the manufacturer/output service provider can take the credit immediately as soon as the inputs are received in the factory/premises:

- (a) without waiting till the inputs are actually utilized in the manufacture and

(b) even if the payment for the inputs to the supplier is pending.

(2) Credit available on receipt of inputs in the premises of principal manufacturer in case of jewellery manufactured on job-work basis: The first proviso to rule 4(1) lays down that where articles of jewellery or other articles of precious metals falling under heading 7113 or 7114, as the case may be, of the Central Excise Tariff are manufactured on job work basis, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the principal manufacturer subject to the condition that such inputs are used in the manufacture of articles of jewellery by the job worker.

(3) Credit available to output service provider on maintenance of documentary evidence of delivery and location of the inputs: CENVAT credit in respect of inputs may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs [Second proviso to sub-rule (1)].

(4) Credit to be availed within six months of the date of invoice: *The manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in rule 9(1) - invoice/bill/challan etc. [Third proviso to sub-rule (1)].*

B. CAPITAL GOODS

(1) 50% credit on capital goods in the year of receipt: Sub-rule 2(a) restricts the quantum of credit in respect of capital goods received in a factory or in the premises of the provider of output service or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory at any point of time in a given financial year as under:

- a. Upto 50% in the same financial year;
- b. Balance in one or more subsequent financial years provided the capital goods is still in the possession of the manufacturer or the output service provider.

Exception:

Credit in case of components, spares accessories etc.: In respect of certain capital goods like components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the Central Excise Tariff, the condition regarding possession of the capital goods in the second year is not applicable. This is so because such items, being consumables, may not be available in next year or in subsequent years at all. Further, even if they are available, it would be practically impossible to locate them and prove their possession.

Availing full 50% credit not mandatory in the first year: Credit of any amount not exceeding 50% of the duty paid on the capital goods can be taken in the first year. Therefore, even 25% credit can be taken in the first year and the balance (75% in this case) can be taken in the subsequent financial years. Similarly, assessee can take full credit in the second year, if he does not take any CENVAT credit in the first year (as nil does not exceed 50%).

(2) **Credit available to output service provider on maintenance of documentary evidence of delivery and location of the inputs:** CENVAT credit in respect of capital goods may be taken by the provider of output service when the capital goods are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the capital goods [Fourth proviso to sub-rule (2)(a)].

(3) **Cases where 100% credit on capital goods is allowed in the year of receipt:** In the following cases 100% credit of duty paid on capital goods is available:

(i) **Receipt of capital goods by SSI:** An assessee eligible to avail of the exemption under a notification based on the value of clearances in a financial year is allowed to take the CENVAT credit in respect of capital goods received by him for the **whole amount of the duty** paid on such capital goods in the same financial year [Third proviso to sub-rule (2)(a)].

Above relaxation is available to a unit who is “eligible” to claim SSI exemption regardless of whether the unit actually claims it or opts to pay duty.

An “eligible” unit is one whose aggregate value of clearances of all excisable goods for home consumption did not exceed ₹ 400 lakh in the preceding financial year.

(ii) **Capital goods cleared as such in the year of acquisition:** If the capital goods are cleared as such in the same financial year, CENVAT credit in respect of such capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year.

(iii) **Credit of CVD leviable under section 3(5):** CENVAT credit of the additional duty leviable under section 3(5) of the Customs Tariff Act in respect of capital goods shall be allowed immediately on receipt of the capital goods in the factory of a manufacturer.

(4) **Capital goods acquired on lease, hire purchase:** Sub-rule (3) allows CENVAT credit on capital goods even when the same are acquired on lease, hire-purchase or through loan from a financing company.

(5) **Credit *vis a vis* depreciation on capital goods:** Sub-rule (4) provides that no CENVAT credit shall be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service claims as depreciation under section 32 of the Income-tax Act, 1961.

In other words the manufacturer or provider of output service cannot enjoy the benefit of both depreciation allowance as well as CENVAT credit.

C. INPUT SERVICE

(1) **Credit allowed on receipt of invoice:** Sub-rule (7) provides that the CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received.

(2) Credit allowed on payment of service tax, if service tax is paid under full reverse charge: *In respect of input service where the whole of the service tax is liable to be paid by the recipient of the service, credit shall be allowed after the service tax is paid [First proviso to sub-rule (7)].*

(3) Credit allowed on payment of value of input service and tax leviable thereon, if service tax is paid under partial reverse charge: In respect of an input service, where the service recipient is liable to pay a part of service tax and the service provider is liable to pay the remaining part, the CENVAT credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9 [Second proviso to sub-rule (7)].

(4) Credit to be reversed if value of input service and service tax payable not paid within 3 months of the date of invoice/bill/challan: In case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, *(except in respect of input service where the whole of the service tax is liable to be paid by the service recipient of services)*, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service.

In case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules [Third proviso to sub-rule (7)].

(5) Proportionate credit to be reversed in case of partial refund of payment made towards input service or receipt of credit note by the manufacturer/service provider: If any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited [Fourth proviso to sub-rule (7)].

(6) Credit to be availed within six months of the date of invoice: The manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in rule 9(1) - invoice/bill/challan etc. [Sixth proviso to sub-rule (7)].

Points which merit consideration

1. The amount mentioned in this sub-rule shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month ["following quarter" in case of SSI manufacturer and service provider who is an individual/proprietary firm/partnership firm] except for the month of March ["quarter ending with the month of March" in case of SSI manufacturer and service provider who is an individual/proprietary firm/partnership firm], when such payment shall be made on or before the 31st day of the month of March.
2. If the manufacturer of goods or the provider of output service fails to pay the amount payable under this sub-rule, it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

7.5 Job Work provisions [Rule 4(5) and 4(6)]

(1) Credit allowed on goods sent to job-worker when the same are received back within 180 days: The goods (being inputs or capital goods) may be sent to the job worker for further processing, testing, repair, reconditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose. Rule 4(5) lays down that CENVAT credit will be allowed on such goods if they are received back in the factory within 180 days of their being sent to the job worker.

(2) Credit to be reversed when goods sent to job-worker not returned within 180 days: In case, the goods are not returned within 180 days, the credit on such goods has to be reversed. However, credit can be retaken once the goods come back.

(3) Credit allowed on jigs, fixtures, moulds and dies sent to another manufacturer/job worker without the condition of being returned in 180 days: Sub-rule (5)(b) extends the CENVAT credit in respect of jigs, fixtures, moulds and dies sent by manufacturer of final products to:-

- (a) another manufacturer for the production of goods, or
- (b) a job worker for the production of goods on his behalf

according to his specifications.

Since these items are consumables in nature, it is obvious that the same cannot be received back in the factory of the manufacturer. Therefore, credit is allowed on such items without any condition of reversing the same after the expiry of 180 days.

(4) Direct dispatch of final products from job-worker's premises: Sub-rule (6) allows direct dispatch or clearance of final products from job worker's premises subject to the approval of Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, in each such case of removal. This approval can be granted on an annual basis to each job worker. The direct dispatch is to be carried out as per the conditions imposed by such Deputy/Assistant Commissioner of Central Excise.

For instance, when the job worker is in Bangalore, principal manufacturer is in Delhi and customer in Chennai, it may be practical to get authorization to remove the finished goods directly from Bangalore to Chennai.

7.6 Rule 5 – Refund of CENVAT credit

(1) Credit to be refunded where goods/services are exported without payment of duty/service tax: A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette [Sub-rule (1)].

Refund amount is calculated as follows:-

$$\left[\frac{\text{Export turnover of goods} + \text{Export turnover of services}}{\text{Total Turnover}} \times \text{Net CENVAT credit} \right]$$

- (A) **Refund** amount means the maximum refund that is admissible.
- (B) **Net CENVAT credit** means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of rule 3(5C), during the relevant period.
- (C) **Export turnover of goods** means the value of final products and intermediate products cleared during the relevant period and exported without payment of central excise duty under bond or letter of undertaking.
- (D) **Export turnover of services** means the value of the export service calculated in the following manner, namely:-
Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period.
- (E) **Total turnover** means sum total of the value of -
 (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
 (b) export turnover of services determined in terms of clause (D) above and the value of all other services, during the relevant period; and
 (c) all inputs removed as such under rule 3(5) against an invoice, during the period for which the claim is filed.
- (F) **Export service** means a service which is provided as per rule 6A of the Service Tax Rules 1994.
- (G) **Relevant period** means the period for which the claim is filed.

(2) **Credit not to be refunded when rebate of tax/duty claimed or drawback allowed:** No refund of credit shall be allowed if the manufacturer or provider of output service avails the drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Service Tax Rules, 1994 in respect of such tax.⁵

⁵ Duty drawback and rebate of duty/tax are export incentives. Under duty drawback, excise and customs duty paid on inputs and service tax paid on input services is refunded to the exporter of finished goods. In case of rebate of duty/tax excise duty paid on inputs/service tax paid on input services is refunded to exporter of finished products/services. Concepts relating to duty drawback and rebate of duty/tax will be dealt at the Final Level.

(3) **Value of services:** For the purposes of this rule, the value of services shall be determined in the same manner as the value for the purposes of sub-rule (3) and (3A) of rule 6 is determined.

(4) **Procedure, safeguards, conditions and limitations for claiming refund of credit:** *Notification No. 27/2012-CE (NT) dated 18.06.2012* provides that refund of CENVAT credit shall be allowed subject to the procedure, safeguards, conditions and limitations as specified below, namely:-

A. Safeguards, conditions and limitations

- (a) The manufacturer or provider of output service shall submit not more than one claim of refund under this rule for every quarter.

However, a person exporting goods and service simultaneously, may submit two refund claims one in respect of goods exported and other in respect of the export of services every quarter.

- (b) In this notification quarter means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.
- (c) The value of goods cleared for export during the quarter shall be the sum total of all the goods cleared by the exporter for exports during the quarter as per the monthly or quarterly return filed by the claimant.
- (d) The total value of goods cleared during the quarter shall be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly or quarterly return filed by the claimant.
- (e) In respect of the services, for the purpose of computation of total turnover, the value of export services shall be determined in accordance with clause (D) of sub-rule (1) of rule 5 of the said rules.
- (f) For the value of all services other than export during the quarter, the time of provision of services shall be determined as per the provisions of the Point of Taxation Rules, 2011.
- (g) The amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less.
- (h) The amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his CENVAT credit account at the time of making the claim.
- (i) In case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and amount sanctioned.

B. Procedure for filing the refund claim

1. The manufacturer/provider of output service shall submit a duly signed application in Form A to the jurisdictional Assistant Commissioner/Deputy Commissioner of Central Excise (AC/DC) along with the specified documents and enclosures before the expiry of the period specified in section 11B of the Central Excise Act⁶ [*one year from the date of export of goods/services*].
2. The refund claim shall be accompanied by the copies of bank realization certificate and a certificate duly signed by the auditor certifying the correctness of refund claimed in respect of export of services.
3. Assistant/Deputy Commissioner, after satisfying himself in respect of the correctness of the claim and the fact that goods cleared for export or services provided have actually been exported, shall allow the refund claim in full or part.

7.7 Rule 5A – Refund of CENVAT credit to units in specified areas

The Central Government may allow refund of CENVAT credit of duty taken on inputs used in the manufacture of final products cleared in terms of *Notification No. 20/2007-CE dated 25.04.2007*, if the manufacturer is unable to utilize such credit for paying duty on such final products. [*Notification No. 20/2007 CE dated 25.04.2007 grants exemption to certain specified goods cleared from units located in North-Eastern States in respect of duty paid in cash.*]

However, the refund shall not be allowed if the final products are exempt or subject to nil rate of duty. The refund of credit shall be allowed subject to prescribed procedures, conditions and limitations.

For the purposes of this rule, "duty" means any of the duties specified in rule 3 (1).

7.8 Rule 5B – Refund of CENVAT credit to service providers providing services taxed on reverse charge basis

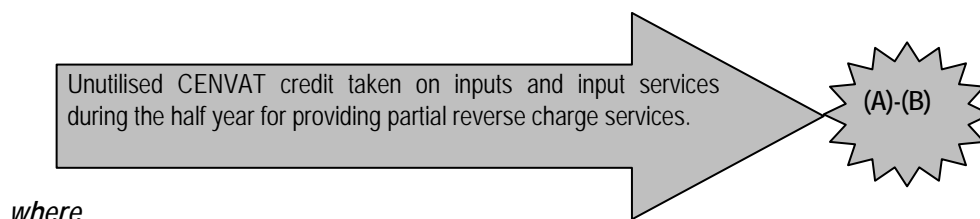
A service provider rendering services notified under section 68(2) of the Finance Act (services taxed on reverse charge basis) and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit. *The procedure, safeguards, conditions and limitations to which such refund shall be subject to have been prescribed by CBEC vide Notification No. 12/2014 CE (NT) dated 03.03.2014 as under:*

A. SAFEGUARDS, CONDITIONS AND LIMITATIONS

(a) Refund is admissible, of unutilised CENVAT credit taken on inputs and input services during the half year for which refund is claimed, for providing following output services:

⁶ Section 11B contains the provisions in respect of claim of refund of duty. The same will be discussed at Final Level.

- (i) *renting of a motor vehicle designed to carry passengers on non-abated value, to any person who is not engaged in a similar business;*
 - (ii) *supply of manpower for any purpose or security services; or*
 - (iii) *service portion in the execution of a works contract;*
- (hereinafter above mentioned services will be termed as partial reverse charge services). The amount of refund would be computed as follows:*



$$A = \frac{\text{CENVAT credit taken on inputs and input services during the half year}}{\text{Turnover of output service under partial reverse charge during the half year}} \times \frac{\text{Total turnover of goods and services during the half year}}{\text{Total turnover of goods and services during the half year}}$$

$B =$ *Service tax paid by the service provider for such partial reverse charge services during the half year.*

- (b) *Refund shall not exceed the amount of service tax liability paid/payable by the service receiver with respect to the partial reverse charge services provided during the period of half year for which refund is claimed.*
- (c) *Amount claimed as refund shall be debited by the claimant from his CENVAT credit account at the time of making the claim. However, if the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and the amount sanctioned.*
- (d) *The claimant shall submit not more than one claim of refund under this notification for every half year.*
- (e) *Refund claim shall be filed after filing of service tax return for the period for which refund is claimed.*
- (f) *No refund shall be admissible for the CENVAT credit taken on input or input services received prior to 01.07.2012.*

Half year means a period of six consecutive months with the first half year beginning from the 1st day of April every year and second half year from the 1st day of October of every year.

B. PROCEDURE FOR FILING THE REFUND CLAIM

(a) The output service provider shall submit an application in Form A, along with specified documents and enclosures, to jurisdictional Assistant Commissioner/Deputy Commissioner, before the expiry of 1 year from the due date of filing of return for the half year. Copies of return(s) filed for the said half year shall also be filed along with the application.*

**In case of more than one return required to be filed for the half year, 1 year shall be calculated from due date of filing of the return for the later period.*

However, last date of filing of application in Form A, for the half year ending on 30.09.2012, shall be 30.04.2014.

(b) The Assistant Commissioner/Deputy Commissioner, may call for any document in case he has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim, and shall sanction the claim after satisfying himself that the refund claim is correct and complete in every respect.

7.9 Rule 6 – Obligation of manufacturer or producer of final products and a provider of output service

(1) No CENVAT credit on inputs/input services used in manufacture of exempted goods/for provision of exempted services [Sub-rule (1)]: CENVAT is not allowed on:-

(i) such quantity of input used in or in relation to the manufacture of exempted goods or for provision of exempted services

or

(ii) input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services

except in the circumstances mentioned in sub-rule (2).

(2) CENVAT credit available in respect of the goods removed without payment of duty by a job worker doing job-work in articles of jewellery: CENVAT credit on inputs is not denied to a job worker referred to in rule 12AA of the Central Excise Rules, 2002⁷, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule [Proviso to sub-rule (1)].

Since, as per rule 12AA, the liability of payment of duty has been cast on the principal manufacturer, goods are cleared by a job-worker without payment of duty. However, CENVAT credit on the inputs used in the manufacture of such goods is not denied by virtue of the proviso to rule 6(1) mentioned above.

⁷ Rule 12AA sets out the provisions in respect of job work in case of articles of jewellery. It will be discussed at the Final Level.

Points to be noted:

- (i) **Expression “in or in relation” to be read harmoniously with the definition of “inputs”:** It has been clarified vide *Circular No.943/04/2011-CX dated 29.04.2011* that the expression “in or in relation” used in rule 6 does not override the definition of “input” under rule 2(k) for determining the eligibility of CENVAT credit. The definition of “input” is given in rule 2(k) and rule 6 only intends to segregate the credits of inputs used towards dutiable goods and exempted goods. Therefore, while applying rule 6, the expression “in or in relation” must be read harmoniously with the definition of “inputs”.
- (ii) **Reversal of credit where nil rated/exempted waste products arise during the course of manufacture:** *Circular No. 904/24/09 CX dated 28.10.2009* has clarified that in case the rate of duty in respect of bagasse, aluminium/zinc dross and other waste products arising during the course of manufacture and capable of being sold is NIL in the tariff or they are exempt from duty in terms of any exemption notification, and if CENVAT credit has been taken on the inputs which are used for manufacture of dutiable and exempted goods, then in terms of rule 6 of the CENVAT Credit Rules, 2004, the assessee is required to reverse the proportionate credit or pay 6% amount.
- (2) CENVAT credit on inputs/input services allowed where separate accounts are maintained [Sub-rule (2)]:** Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for -
- (i) **Receipt, consumption and inventory of following INPUTS—**
- (a) **Exempted goods and services**
- Inputs used in or in relation to the manufacture of exempted goods
 - Inputs used for the provision of exempted services
- (b) **Dutiable goods and taxable services**
- Inputs used in or in relation to the manufacture of dutiable final products excluding exempted goods
 - Inputs used for the provision of output services excluding exempted services
- AND**
- (ii) **Receipt and use of following INPUT SERVICES—**
- (a) **Exempted goods and services**
- Input services used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal
 - Input services used for the provision of exempted services.

(b) Dutiable goods and taxable services

- Input services used in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal
- Input services used for the provision of output services excluding exempted services.

The manufacturer or output service provider shall take CENVAT credit only on inputs under sub-point (b) of point (i) and input services under sub-point (b) of point (ii) above.

(3) Options where separate accounts are not maintained [Sub-rule(3)]: Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods/the provider of output service, **opting not to maintain separate accounts**, shall follow **any one of the following options**, as applicable to him, namely:-

(i) Option to pay 6% of value of exempted goods/services [Clause (i)]: The manufacturer of goods/the provider of output service has an option to pay the following amount:-

Particulars	Amount (₹)
6% of value of the exempted goods and/or exempted services	XXXX
Less: Duty of excise, if any, paid on the exempted goods	<u>XXXX</u>
Amount payable under rule 6(3)(i)	<u>XXXX</u>

Points to be noted:

(a) 6% of the exempted value of the service to be paid in case of partially exempted services with no facility of credits: If any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be 6% of the value so exempted.

For example, if the abatement on certain service is 60%, the amount required to be paid shall be 3.6% (6% of 60) of the full value of the exempted service.

(b) Reversal of 2% in case of transport of goods/passengers by rail: In case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) of rule 6(3) shall be an amount equal to 2% of the value of the exempted services.

(ii) Option to pay proportionate amount determined under sub-rule (3A) [Clause (ii)]: The manufacturer of goods/the provider of output service has an option to pay an amount as determined under sub-rule (3A).

(iii) Option to maintain separate accounts only in respect of inputs and payment of amount under sub-rule (3A) in respect of input services [Clause (iii)]: The manufacturer of goods/the provider of output service has an option to:-

- (a) **maintain separate accounts** only for the receipt, consumption and inventory of inputs and take CENVAT credit only on inputs used in or in relation to the manufacture of dutiable final products and for the provision of taxable output services

AND

- (b) pay an **amount as determined under sub-rule (3A)** in respect of input services.

However, the provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment.

Points which merit consideration:

- (i) If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.
- (ii) It is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.
- (iii) No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

(4) Method of computation of amount payable under sub-rule 3(ii) [Sub-rule (3A)]: For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely:-

- (a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-
 - (i) name, address and registration no. of the manufacturer of goods or provider of output service;
 - (ii) date from which the option under this clause is exercised or proposed to be exercised;
 - (iii) description of dutiable goods or output services;
 - (iv) description of exempted goods or exempted services;
 - (v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;
- (b) the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month,-
 - (i) the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;

- (ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional) = (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of output services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;
- (iii) the amount attributable to input services used in or in relation to manufacture of exempted goods [and their clearance upto the place of removal] or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;
- (c) the manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely :-
 - (i) the amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;
 - (ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services = (J/K) multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of output services provided plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;
 - (iii) the amount attributable to input services used in or in relation to manufacture of exempted goods [and their clearance upto the place of removal] or provision of exempted services = (M/N) multiplied by P, where M denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, N denotes total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and P denotes total CENVAT credit taken on input services during the financial year;
- (d) the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;

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- (e) the manufacturer of goods or the provider of output service, shall, in addition to the amount short-paid, be liable to pay interest at the rate of 24% per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date;
 - (f) where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;
 - (g) the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) and (f) respectively, the following particulars, namely :-
 - (i) details of CENVAT credit attributable to exempted goods and exempted services, monthwise, for the whole financial year, determined provisionally as per condition (b),
 - (ii) CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (c),
 - (iii) amount short paid determined as per condition (d), alongwith the date of payment of the amount short-paid,
 - (iv) interest payable and paid, if any, on the amount short-paid, determined as per condition (e), and
 - (v) credit taken on account of excess payment, if any, determined as per condition (f);
 - (h) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no output service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.
 - (i) where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of 24% per annum from the due date till the date of payment.
- (5) Banking company & financial institution (including NBFC) required to pay 50% of credit availed [Sub-rule (3B)]:** Notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company (NBFC), engaged in providing services by way of extending deposits, loans or advances, shall pay for every month an amount equal to 50% of the CENVAT credit availed on inputs and input services in that month.

(6) **Payment under sub-rule (3) deemed to be CENVAT credit not taken for the purpose of exemption notification [Sub-rule (3D)]:** Payment of an amount under sub-rule (3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken.

(7) **“Value” for the purpose of sub-rules (3) and (3A):-**

- (a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder;
- (b) in the case of a taxable service, when the option available under sub-rules (7),(7A),(7B) or (7C) of rule 6 of the Service Tax Rules, 1994, has been availed, shall be the value on which the rate of service tax under section 66B of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed;
- (c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or 10% of the cost of goods sold, whichever is more;

[The taxes and year end discounts should be included in the sale price and cost of goods sold. All taxes for which set off or credit is available or are refundable/ refunded may not be included. Discounts are to be included - *Circular No. 943/4/2011 CX dated 29.04.2011*].

- (d) in case of trading of securities, shall be the difference between the sale price and the purchase price of the securities traded or 1% of the purchase price of the securities traded, whichever is more;
- (e) shall not include the value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Points which merit consideration

1. The amount mentioned in sub-rules (3), (3A) and (3B), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.
2. If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (3), (3A) and (3B), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.
3. In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, “following month” and “month of March” occurring in sub-rules (3) and (3A) shall be read respectively as “following quarter” and “quarter ending with the month of March.”

(8) CENVAT credit not allowed on capital goods used exclusively in manufacture of exempted goods/for provision of exempted services [Sub-rule (4)]: No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods/in providing exempted services.

However, CENVAT credit in respect of the capital goods used in the manufacture of the exempted final products of an SSI unit shall be allowed.

Note: A SSI unit can avail the CENVAT credit of the capital goods used exclusively in manufacture of the exempted final product, but the same can be utilised for payment of duty only when the clearances cross ₹ 150 lakh.

Credit not allowed on capital goods used in manufacture of goods exempt under Notification 1/2011- CE or provision of partially exempted service subject to non-availment of credit of inputs and input services: As per Rule 6(4), no credit can be availed on capital goods used exclusively in manufacture of exempted goods or in providing exempted service. Goods in respect of which the benefit of an exemption under *Notification No. 1/2011-CE, dated 01.03.2011* is availed are exempted goods [Rule 2(d)]. Taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service shall be taken are exempted services [Rule 2(e)].

Hence, credit of capital goods used exclusively in manufacture of such goods or in providing such service is not allowed [*Circular No. 943/04/2011-CX dated 29.04.2011*].

(9) Provisions of sub-rule (1) to (4) not applicable in respect of certain excisable goods removed without payment of duty [Sub-rule (6)]: The provisions of sub-rules (1), (2), (3) and (4) do not apply to removal of certain specified excisable goods without payment of duty. In case of these removals, though the final product is removed without payment of duty, CENVAT credit on inputs/capital goods/input services used in the manufacture of such final product can be availed. In other words, in such cases, reversal of credit or payment of amount will not be required. Such cases are as follows:-

- (i) **Clearances to unit/developer of SEZ:** The excisable goods cleared to a unit in a special economic zone (SEZ) or to a developer of a special economic zone for their authorized operations without payment of duty.
- (ii) **Clearances to 100% EOU:** The excisable goods cleared to a hundred percent export-oriented undertaking (100% EOU) without payment of duty.
- (iii) **Clearances to EHTP/STP:** The excisable goods cleared to a unit in an Electronic Hardware Technology Park (EHTP) / Software Technology Park (STP) without payment of duty.
- (iv) **Goods supplied to the UN/International organization:** The excisable goods supplied, without payment of duty, to the United Nations (UN) or an international organization for their official use or supplied to projects funded by them which are exempt under *Notification No. 108/95-CE dated 28.08.1995*.
- (iva) **Goods supplied to diplomatic missions/consular missions etc.:** The excisable goods supplied, without payment of duty, for the use of foreign diplomatic missions or

consular missions or career consular offices or diplomatic agents in terms of the provisions of *Notification No. 12/2012-CE dated 17.03.2012*.

- (v) **Export under bond:** The excisable goods cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002 without payment of duty.
- (vi) **Gold/silver (falling within Chapter 71):** Gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting are removed without payment of duty.
- (vii) **Specified goods exempt from import duty and CVD:** All goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied, without payment of duty —
 - (a) against International Competitive Bidding; or
 - (b) to a power project from which power supply has been tied up through tariff based competitive bidding; or
 - (c) to a power project awarded to a developer through tariff based competitive bidding, in terms of *Notification No. 12/2012 CE dated 17.03.2012*;
- (viii) **Supplies made without payment of duty for setting up of solar power generation projects or facilities**
- (10) **Provisions of sub-rule (1) to (4) not to apply in respect of services provided to a unit/developer of SEZ without payment of service tax [Sub-rule (7)]:** The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a unit in a Special Economic Zone or to a developer of a Special Economic Zone for their authorized operations or when a service is exported.
- (11) **Export of service *vis a vis* exempt service [Sub-rule (8)]:** For the purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when:-
 - (a) the service satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and
 - (b) such payment has not been received for a period of six months or such extended period as may be allowed from time-to-time by the Reserve Bank of India, from the date of provision.

However, if such payment is received after the specified or extended period allowed by the Reserve Bank of India but within one year from such period, the service provider shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier in terms of rule 6(3). The credit can be availed to the extent it relates to such payment, on the basis of documentary evidence of the payment so received.

7.10 Rule 7 – Manner of distribution of credit by input service distributor

(1) In real life situations, many a times the bill/invoice is raised in the name of head office/regional office etc. for services which are actually received in the factory (or factories) or premises of service provider. In addition, the bill for services which are not specific for any factory/premises, such as advertising, market research, management consultancy etc. would also be received only in these offices. Rule 7 tends to provide a way to distribute such credit to the factory or the premises of the output service provider.

For instance, A Ltd has a corporate office at Bangalore and plants at Hosur and Doddaballapur. Advertisement bills are received by the Bangalore office and also paid there. By virtue of rule 7, Bangalore office can distribute such credit to its plants located at Hosur and Doddaballapur. The plants can take credit and utilize the same to pay excise duty as well as service tax.

(2) Rule 2(m) read with rule 7 defines an "input service distributor" as an office of manufacturer or provider of output service which receives invoices towards purchase of input services and issues invoice, bill or challan for the purpose of distributing the credit of service tax paid on the services to its manufacturing units or units providing output service.

Thus, the distributor is comparable to dealers under the CENVAT scheme of inputs and capital goods. The document issued by him is being accepted under law as eligible document under rule 9(1)(g) for availing credit.

To pass on the credit, the input service distributor has to obtain service tax registration, comply with rule 4A of Service Tax Rules and file half-yearly return with the Superintendent under rule 9(10) of CENVAT rules 2004.

(3) Distribution of credit by input service distributor: The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely:—

- (a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;
- (b) credit of service tax attributable to service used ***by one or more such units*** exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;
- (c) credit of service tax attributable to service used wholly ***by*** a unit shall be distributed only to that unit; and
- (d) credit of service tax attributable to service used ***by*** more than one unit shall be distributed *pro rata* on the basis of the turnover ***of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period.***

Points to be noted:- For the purposes of rule 7,

- (i) Unit includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.
- (ii) Total turnover shall be determined in the same manner as determined under rule 5.
- (iii) *Relevant period: For the purposes of this rule, the 'relevant period' shall be,-*
 - (a) *If the assessee has turnover in the 'financial year' preceding to the year during which credit is to be distributed for month or quarter, as the case may be, the said financial year; or*
 - (b) *If the assessee does not have turnover for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed.*

Manner of distribution of common input service credit under rule 7(d): It has been clarified vide Circular No. 178/4/2014 dated 11.07.2014 that rule 7(d) seeks to allow distribution of input service credit to all units in the ratio of their turnover of the previous year.

Example

An Input Service Distributor (ISD) has a total of 4 units namely 'A', 'B', 'C' and 'D', which are operational in the current year. How will the credit of input service pertaining to more than one unit be distributed?

Answer

Distribution to 'A' = $X/Y \times Z$

X = Turnover of unit 'A' during the relevant period

Y = Total turnover of all its unit i.e. 'A' + 'B' + 'C' + 'D' during the relevant period

Z = Total credit of service tax attributable to services used by more than one unit

Similarly the credit shall be distributed to the other units 'B', 'C' and 'D'.

Example

An ISD has a common input service credit of ₹ 12000 pertaining to more than one unit. The ISD has 4 units namely 'A', 'B', 'C' and 'D' which are operational in the current year.

Unit	Turnover in the previous year (₹)
A (Manufacturing excisable goods)	25,00,000
B (Manufacturing excisable and exempted goods)	30,00,000
C (providing exclusively exempted service)	15,00,000
D (providing taxable and exempted service)	30,00,000
Total	1,00,00,000

The common input service relates to units 'A', 'B' and 'C'. How will the credit be distributed?

Answer

The distribution of credit will be as under:

(i) *Distribution to 'A'*

$$\begin{aligned} &= 12,000 * 25,00,000/1,00,00,000 \\ &= 3,000 \end{aligned}$$

(ii) *Distribution to 'B'*

$$\begin{aligned} &= 12,000 * 30,00,000/1,00,00,000 \\ &= 3,600 \end{aligned}$$

(iii) *Distribution to 'C'*

$$\begin{aligned} &= 12,000 * 15,00,000/1,00,00,000 \\ &= 1,800 \end{aligned}$$

(iv) *Distribution to 'D'*

$$\begin{aligned} &= 12,000 * 30,00,000/1,00,00,000 \\ &= 3,600 \end{aligned}$$

The distribution for the purpose of rule 7(d) will be done in this ratio in all cases, irrespective of whether such common input services were used in all the units or in some of the units.

7.11 Rule 7A – Distribution of credit on inputs by the office or any other premises of output service provider

(1) While rule 7 allows the distribution of credit on input services by the input service distributor, rule 7A allows the distribution of credit on inputs and capital goods by the office or any other premises of output service provider.

(2) Many a times bills / invoices for inputs and capital goods are raised in the name of head office/regional office etc. while the same are received in some other premises of the service provider from where the services are actually provided. In such a case, the head office can distribute the credit of such inputs and capital goods to the service provider by issuing an invoice.

(3) Sub-rule (1) lays down that a provider of output service shall be allowed to take credit on inputs and capital goods received, on the basis of an invoice or a bill or a challan issued by an office or premises of the said provider of output service, which receives invoices, issued in terms of the provisions of the Central Excise Rules, 2002, towards the purchase of inputs and capital goods.

(4) Sub-rule (2) provides that the provisions of these rules or any other rules made under the Central Excise Act, 1944, as made applicable to a first stage dealer or a second stage dealer,

shall *mutatis mutandis* apply to such office or premises of the provider of output service.

7.12 Rule 8 – Storage of inputs outside the factory of the manufacturer

(1) The Assistant/Deputy Commissioner can permit the inputs in respect of which CENVAT has been taken to be stored outside the factory of the manufacturer concerned. However, such storage of inputs outside the factory shall be allowed only in the exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of such manufacturer, and shall be subject to suitable safeguards against any loss of revenue.

(2) Where such inputs are not subsequently used in the manner prescribed in these rules for any reason whatsoever, it has been stipulated that the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such inputs.

7.13 Rule 9 – Documents and accounts

(1) **Eligible documents:** Sub-rule (1) allows manufacturer or the provider of output service or input service distributor to avail CENVAT credit on the basis of *any* of the following documents:

Nature of document	
1.	Invoice issued by a manufacturer for clearance of inputs or capital goods from his factory or depot or from the premises of his consignment agent or from any other premises from where the goods are sold
2.	Invoice issued by a manufacturer for clearance of inputs or capital goods as such
3.	Invoice issued by an importer
4.	Invoice issued by an importer from his depot or from the premises of his consignment agent if the said depot or the premises are registered under central excise.
5.	Invoice issued by a first stage dealer or a second stage dealer under Central Excise Rules, 2002.
6.	Bill of entry.
7.	A supplementary invoice issued by a manufacturer or importer of inputs or capital goods where additional amount of excise duty or CVD has been paid except in a case where such payment was on account of fraud, suppression of facts etc. [A supplementary invoice includes challan or any other similar document evidencing payment of additional duty leviable under section 3 of the Customs Tariff Act.]
8.	A supplementary invoice, bill or challan issued by a provider of output service except where the additional amount of tax became recoverable from the service provider on account of fraud, suppression of facts etc.
9.	Certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office.

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10. A challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax
11. An invoice, a bill or challan issued by a provider of input service
12. An invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

Points to be noted:

(i) Credit of special CVD (additional duty of customs levied under section 3(5) of the Customs Tariff Act, 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible.

(ii) Since, rule 9 states that credit can be taken on the basis of *an* invoice issued by a manufacturer/importer/dealer/service provider; credit can be availed on the basis of *any* copy of the invoice viz., ORIGINAL FOR BUYER or DUPLICATE FOR TRANSPORTER or TRIPLICATE FOR ASSESSEE.

(iii) A supplementary invoice is issued by the supplier-manufacturer/service provider when he pays additional duty/service tax on inputs or capital goods/input services supplied/provided by him. The additional payment of duty/tax can be on account of reasons like any demand, audit objection, cost escalation granted by buyer etc.

(2) Contents of the documents: Sub-rule (2) provides that the CENVAT credit can be taken only if **all** the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994 are available on the invoice or other duty-paying document.

However, the Deputy/Assistant Commissioner may allow the CENVAT credit even if the said document does not contain all the particulars but the following two conditions are satisfied:

(a) The document contains the following information:

- details of duty or service tax payable,
- description of the goods or taxable service,
- assessable value,
- central excise/service tax registration number of the person issuing the invoice
- name and address of the factory or warehouse or premises of first or second stage dealers or provider of output service, and

(b) The Deputy/Assistant Commissioner is satisfied that the:

- (i) goods or services covered by the said document have been received and
- (ii) accounted for in the books of the account of the receiver.

(3) Credit on goods purchased from first stage or second stage dealer: Sub-rule (4) lays down that the CENVAT credit in respect of inputs or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if-

- such first stage dealer/second stage dealer has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods; **and**
- only an amount of such duty on *pro rata* basis has been indicated in the invoice issued by him.

(4) Records for inputs and capital goods: As per sub-rule (5), the manufacturer of final products or the provider of output service has to maintain proper records for the-

- receipt,
- disposal,
- consumption; and
- inventory

of the input and capital goods.

The records should have the relevant information regarding the-

- value,
- duty paid,
- CENVAT credit taken and utilized, and
- the person from whom the input or capital goods have been procured.

The burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(5) Records for input service: Sub-rule (6) specifies that the manufacturer of final products or the provider of output service has to maintain proper records for the receipt and consumption of the input services.

The records should have the relevant information regarding the value, tax paid, CENVAT credit taken and utilized and the person from whom the input service has been procured. The burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(6) CENVAT credit returns: The provisions with regard to filing of CENVAT credit returns are explained in sub-rules (7) to (11). Returns are required to be filed by (i) manufacturer, (ii) first stage dealer or a second stage dealer, (iii) output service provider and (iv) input service distributor in the manner described below:

- (i) Monthly/Quarterly return for a manufacturer:** The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a **monthly return** in Form **ER-1**.

However, in case of SSI units a quarterly return in Form **ER-3** is filed within ten days after the close of the quarter to which the return relates [Sub-rule 7].

- (ii) **Quarterly return for a first stage dealer or a second stage dealer:** A first stage dealer or a second stage dealer *or a registered importer*, as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified, by notification, by the Board [Sub-rule (8)].
- (iii) **Half-yearly return for an output service provider:** Sub-rule (9) lays down that the provider of output service availing CENVAT credit, shall submit a **half yearly return in Form ST-3** to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year.
- (iv) **Half-yearly return for an input service distributor:** Sub-rule (10) prescribes that the input service distributor, shall submit a **half yearly return in Form ST-3**, giving the details of credit received and distributed during the said half year, to the jurisdictional Superintendent of Central Excise, by the end of the month following the half year.

Note: All the above returns have to be filed electronically.

- (7) **Revision of return:** Sub-rule (11) allows the output service provider or the input service distributor to rectify mistakes or omission and file revised return within 60 days from the date of filing of original return.

FEEDBACK FORM

(1)	Name of the Student					
(2)	Registration No.					
	Contact detail with e-mail id, mobile number, etc.					
(3)	Subject & Paper No.	Paper: 4 Part-II : Indirect Taxes				
(4)	Name of Publication	Study Material				
(5)	Edition	October, 2014 (Revised)				
(6)	Do you find the publication student-friendly?					
(7)	Do the illustrations in the Study Material assist in understanding of the provisions contained in the Study Material?					
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(9)	Are there any errors which you have noticed in the publication? If yes, give the specific details :					
	Type of Error (Specify nature of error)	Chapter No. (Unit No., if applicable)	Page No.	Para No. & line of the para	Text or problem (containing the error) as per the publication	Suggested Correction
	Typographical/ Printing/ Computational/ Conceptual/ Updation					
(10)	Do you feel that the publication can be made more value additive? If so, please give your specific suggestions. _____ _____					

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